

## REAL ESTATE LICENSEES ERRORS AND OMISSIONS POLICY

### NOTICE

THIS INSURANCE IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS. EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, COVERAGE UNDER THIS MASTER POLICY IS LIMITED TO LIABILITY ONLY FOR THOSE **CLAIMS** THAT ARE FIRST MADE AGAINST THE **INSURED** AND REPORTED TO THE COMPANY DURING THE **INDIVIDUAL POLICY PERIOD** OR ANY APPLICABLE EXTENDED REPORTING PERIOD. NO COVERAGE EXISTS FOR **CLAIMS** FIRST MADE AGAINST THE **INSURED** BEFORE THE BEGINNING OR AFTER THE END OF THE **INDIVIDUAL POLICY PERIOD**. PLEASE REVIEW THIS MASTER POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

### INSURING AGREEMENT

#### I. COVERAGE

The Company will pay on behalf of the **Insured Damages** for those sums in excess of the Deductible which the **Insured** shall become legally obligated to pay by reason of any negligent act, error or omission arising out of **Professional Services**, so long as the **Claim** is first made against the **Insured** during the **Individual Policy Period** and reported to the Company in writing during the **Individual Policy Period**, unless an Extended Reporting Period applies provided that:

- A. such negligent act, error or omission was committed or alleged to have been committed, in whole or in part, subsequent to the **Retroactive Date**; and
- B. prior to the inception date of the **Individual Policy Period** no **Insured** had a basis to believe that any such negligent act, error or omission, or **Related Negligent Act, Error or Omission** might reasonably be expected to be the basis of a **Claim** against the **Insured**.

The Company has the right and duty to defend the **Insured** against any **Claim** seeking **Damages** covered by this policy. The Company has the right to select counsel, to make investigation of the circumstances of the **Claim** and to make payments of judgments or settlements and **Claim Expenses** as the Company deems necessary. In the event a **Claim** is subject to arbitration or mediation, the Company is entitled to exercise all of the rights of the **Insured** in the choice of arbitrators or mediators and in the conduct of any arbitration or mediation proceeding. The Company has no duty to defend any **Claim** not covered by this policy.

The Company will not settle any **Claim** without the consent of the **Insured**, which consent shall not be unreasonably withheld. If the Company recommends a settlement to the **Insured** which is agreeable to the claimant and the **Insured** does not agree to settle, the Company's Limits of Liability are reduced to the total amount for which the **Claim** could have been settled. The maximum amount the Company will pay in the event of any later settlement or judgment is the amount for which the **Claim** could have been settled plus the amount of **Claim Expenses** incurred up to the time the Company made the recommendation.

#### II. LIMITS OF LIABILITY

The Declarations sets forth the Company's Limits of Liability for the **Licensee**. The Limits of Liability are excess of the Deductible. All other persons or organizations included under the definition of **Insured** share such Limits of Liability with the **Licensee**. The Limits of Liability apply regardless of the number of **Claims** made or the number of persons or organizations making **Claims** against the **Insured**. If **Related Claims** are subsequently made against the **Insured** and reported to the Company during this Group Policy or any renewal of this Group Policy, all such **Related Claims**, whenever made, shall be considered a single **Claim** first made and reported to the Company within the **Annual Policy Term** in which the earliest of the **Related Claims** was first made and reported to the Company.

- A. Subject to paragraph B below, the Company's Limits of Liability for **Damages** for each **Claim** shall not exceed the amount stated in Item 3 (a) of the Declarations.
- B. If a **Claim** involves coverage issued to two or more **Licensees**, the amount paid by the Company on behalf of all **Insureds** under each **Licensees'** coverage, shall be prorated in relationship to the amount awarded against each such **Insured**, but in no event shall that amount paid by the Company for all **Insureds** under each **Licensees'** coverage exceed the per **Licensee** Limits of Liability shown on the Declarations.
- C. The Aggregate Limit under Item 3 (b) of the Declarations applies separately to each consecutive **Annual Policy Term**. Any Extended Reporting Period will be deemed part of the last preceding **Annual Policy Term** for purposes of determining the Limits of Liability.
- D. Limits of Liability are not renewed or increased by virtue of the operation of the Automatic or Optional Extended Reporting Periods.
- E. In addition to the Limits of Liability, the Company will pay **Claim Expenses** in connection with covered **Claims**. **Claim Expenses** are in addition to the Limits of Liability. The Company's payment of the Limits of Liability ends the Company's duties to defend, pay **Damages** and pay **Claim Expenses**.

### III. DEDUCTIBLE

The **Insured** shall pay the Deductible, as stated in Item 4 of the Declarations for each **Claim**. The Company's obligation to pay **Damages** begins only after the **Insured** has paid the Deductible. The Deductible applies to the payment of **Damages** only. The Company is obligated for amounts payable in excess of the Deductible. The Company may pay any part or all of the Deductible to settle, defend or investigate a **Claim**. The **Insured** must promptly reimburse the Company any amount of the Deductible paid by the Company. In the event the **Insured** does not reimburse the Company within 60 (sixty) days, the Company will be entitled to recover reasonable costs and attorney fees incurred in collecting such reimbursement.

If a **Claim** involves two or more **Licensees** who are affiliated with the same **Real Estate Firm**, only one Deductible applies. However, the Deductible amount will be shared equally by all **Licensees** involved in the **Claim**. Payment of the Deductible is the joint and several liability of all **Insureds** but collection of the Deductible will be the responsibility of the **Real Estate Firm**.

### IV. SUPPLEMENTARY PAYMENTS

In addition to the Limits of Liability, the Company will pay the following:

- A. Premiums on appeal bonds and bonds to release attachments. Premiums are limited to bonds no larger than the Company's remaining Limits of Liability. Obtaining the bond is not the Company's obligation.
- B. \$250 for each day the **Insured** attends a trial or hearing in a civil lawsuit covered under this policy; however, attendance must be at the Company's request. In no event shall the amount payable under this provision exceed \$5,000 Aggregate Limit per **Annual Policy Term**.
- C. Postjudgment interest on that portion of any judgment to which this insurance applies and which accrues after entry of the judgment and before the Company has paid, offered to pay or deposited, whether in court or otherwise, that part of the judgment for which the Company is responsible.
- D. Notwithstanding the provisions of Exclusion F, the Company will pay up to \$5,000 for property damage, or loss of use of property resulting from property damage, arising out of the **Professional Services** of the **Insured** in the distribution, operation or use of a lock box on property not owned,

occupied by or leased to the **Insured**. The Company has no duty to defend the **Insured** for **Lock Box Liability**. Lock Box **Claims** are subject to a separate reduced Deductible of \$250. The amount payable under this provision shall be subject to a \$10,000 Aggregate Limit per **Annual Policy Term**.

## V. TERRITORY

- A. Coverage applies to a **Licensee** domiciled in Tennessee, performing **Professional Services** in Tennessee.
- B. If the **Licensee** is domiciled in the State of Tennessee, then this policy applies to **Professional Services** performed anywhere in the world, provided that:
  - 1. the **Licensee** will be covered for **Professional Services** performed outside the state of Tennessee only if the **Licensee** is duly licensed in such state and the services performed would require a license pursuant to the laws of Tennessee had the acts been performed in Tennessee; and
  - 2. the **Claim** arising out of the rendering of such **Professional Services** is brought within the United States of America, its territories or possessions.
- C. If the **Licensee** is not domiciled in the State of Tennessee, then this policy applies only to **Professional Services** performed in Tennessee. The **Claim** arising out of the rendering of such **Professional Services** must be brought within the United States of America, its territories or possessions.
- D. For purposes of this section, a **Licensee** who is not domiciled in the State of Tennessee shall be treated as domiciled in the State of Tennessee if the **Licensee's Principal Real Estate License** is affiliated with a real estate office located in the State of Tennessee and the **Licensee** resides within fifty (50) miles of the Tennessee State line.

## VI. EXCLUSIONS

This insurance does not apply to any **Claim** alleging, arising from or related to:

- A. fraudulent, dishonest, criminal or malicious acts committed by the **Insured**, at the **Insured's** direction or with the **Insured's** knowledge, or by anyone for whose acts the **Insured** is legally responsible;
- B. the insolvency of the **Insured**;
- C. the failure to pay, collect or return insurance premiums, escrow monies, earnest money deposits, security deposits, tax money or commissions;
- D. the wrongful termination of employment, breach of an employment contract, or other employment disputes;
- E. bodily injury, sickness, disease, mental anguish, pain or suffering, emotional distress or death of any person;
- F. physical injury to, destruction or loss of use of tangible property;
- G. unfair competition, piracy, advertising injury or theft or wrongful taking of concepts or other intellectual property;
- H. libel, slander, defamation of character, disparagement, detention, humiliation, sexual harassment, false arrest or imprisonment, wrongful entry or eviction, violation of the right to privacy or malicious prosecution, personal injury or other invasion of rights to private occupancy;
- I. discrimination on the basis of race, color, creed, national origin, sex, religion, age, sexual preference, marital status, any mental or physical handicap or disease or any other unlawful discrimination category;

J. **Professional Services** relating to property:

1. developed or constructed by, or
2. more than 10% owned by, or
3. purchased or attempted to be purchased by

an **Insured** or by the spouse of an **Insured** or by any entity, corporation, partnership or trust in which the **Insured** or spouse of an **Insured** owns or controls more than 10% financial interest;

however, this exclusion does not apply to:

- (a) any **Claim** arising from the sale of property acquired by the **Insured** pursuant to a guaranteed sale listing contract. The guaranteed sale listing contract must be a written agreement between the **Insured** and the seller of a property in which the **Insured** agrees to purchase the property if it is not sold under the listing agreement in a specified time. For coverage to apply, the **Insured** must hold title to the property for less than one (1) year and must continually offer it for sale; or
- (b) transactions in which:
  - (i) the property is listed by an **Insured** who is not the property owner, builder or developer, and
  - (ii) the property is advertised, marketed, and promoted by an **Insured** who is not the property owner, builder or developer, and
  - (iii) all **Professional Services** related to the transaction, including the sale or closing on the property, are conducted by an **Insured** who is not the property owner, builder or developer, and
  - (iv) the transaction would otherwise be covered by this policy.

K. violation of the Employee Retirement Income Security Act of 1974, the Securities Act of 1933, the Securities Exchange Act of 1934 or any state Blue Sky or securities laws, or amendments thereto;

L. failure by an **Insured** to provide or maintain insurance;

M. the **Insured's** activities as a lawyer, title agent, mortgage banker, mortgage broker or correspondent, escrow agent, construction manager, property developer or insurance agent;

N. activities involving property syndication, limited partnership or real estate investment trusts in which any **Insured** has, or had, a direct or indirect interest in the profits or losses;

O. liability assumed by any **Insured** under any contract, indemnity agreement, purchase agreement, hold harmless clause or other similar agreement;

P. whether suddenly or over a long period of time:

1. the actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, asbestos, radon or lead;
2. the actual or alleged failure to detect, disclose, report, test for, monitor, clean up, remove, contain, dispose of, treat, detoxify or neutralize, or in any way respond to, assess the effects of or advise of the existence of pollutants; or
3. any nuclear reaction, nuclear radiation or radioactive contamination, or any act, condition or pollution incidental to the foregoing.

As used in this Exclusion, pollution includes the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants. Pollutants include any solid liquid, gaseous, thermal, biological or radioactive substance, material or matter, toxin, irritant or contaminant, including but not limited to radon, asbestos, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Q. whether suddenly or over a long period of time:

1. the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of; or

2. the actual or alleged failure to detect, report, test for, monitor, clean-up, remove, contain, dispose of, treat, detoxify or neutralize, or in any way respond to, assess the effects of or advise of the existence of;

any **Fungi** or **Microbes**, or of any spores, mycotoxins, odors, or any other substances, products or byproducts produced by, released by, or arising out of the current or past presence of **Fungi** or **Microbes**.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the **Damages** claimed.

- R. injury or damage expected or intended by the **Insured**;
- S. disputes over commissions between real estate brokers and/or salespersons or disputes over commissions involving lawsuits initiated by the **Insured**. This exclusion does not apply to disputes over commissions involving counterclaims filed with the approval of the Company.
- T. negligent acts, errors or omissions committed or alleged to have been committed either (1) prior to the date the **Insured** received an active real estate license or (2) subsequent to the effective date of suspension, revocation or inactive status of the **Insured's** real estate license;
- U. any fines, penalties, assessments, or matters deemed uninsurable under applicable law; or
- V. conversion, misappropriation or commingling of funds or other property.

## VII. EXTENDED REPORTING PERIODS

In case of cancellation or nonrenewal, a **Licensee** may be eligible for the following Extended Reporting Periods to apply, both subject to Paragraph C. below:

- A. Automatic Extended Reporting Period: In case of cancellation or nonrenewal because a **Licensee** retires, places license on inactive status or allows license to expire, the policy will apply to **Claims** first made against the **Insured** and reported to the Company up to ninety (90) days after the effective date of cancellation or nonrenewal. Said ninety (90) day period will be hereinafter referred to as the Automatic Extended Reporting Period.
- B. Optional Extended Reporting Period: In case of cancellation or nonrenewal for any reason, the **Licensee** shall have the option, upon payment of an additional premium within ninety (90) days after the effective date of the cancellation or nonrenewal, to cause the policy to apply to **Claims** first made against the **Insured** and reported to the Company during the Optional Extended Reporting Period. The Optional Extended Reporting Period will replace the Automatic Extended Reporting Period. The premium for the Optional Extended Reporting Period will be fully earned and is determined as shown below:

<u>Optional Extended Reporting Periods</u>	<u>Premium</u>
One Year	100%
Two Years	150%
Three Years	200%

The Optional Extended Reporting Period cannot be canceled by the Company or the **Insured**.

- C. Coverage afforded by the Automatic and Optional Extended Reporting Periods:
  1. Shall apply solely to **Claims** arising from a negligent act, error or omission:
    - (a) committed or alleged to have been committed subsequent to the **Retroactive Date**, and

- (b) committed or alleged to have been committed prior to the effective date of cancellation or nonrenewal, and
  - (c) which are otherwise insured under all the other terms, conditions and exclusions of this policy.
2. Shall not apply to any **Claim** which is insured by any other policy of insurance nor as excess above such other policy of insurance.
3. Nothing in Paragraphs A or B shall serve to increase the Limits of Liability as provided in Insuring Agreement II. The Limits of Liability for any Extended Reporting Period shall be a part of, and not in addition to, the Limits of Liability listed on the Declarations.

## VIII. DEFINITIONS

A. **Annual Policy Term** means each one-year period following the effective date of the **Group Policy Period**.

B. **Claim** means:

- 1. a written demand for money or services received by the **Insured**, or
- 2. service of a lawsuit or institution of arbitration or mediation proceedings against the **Insured**;

seeking **Damages** and alleging a negligent act, error or omission in the performance or failure to perform **Professional Services**.

C. **Claim Expenses** means:

- 1. fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim** if incurred by the Company or by the **Insured** with the Company's written consent,
- 2. fees charged by attorneys designated by the Company,

Costs, fees or expenses of employees or officials of the Company are not **Claim Expenses**. Nor shall **Claim Expenses** include salaries, loss of earnings or other remuneration by or to any **Insured**.

D. **Damages** mean judgments, awards and settlements, provided any settlement is made with our prior written consent. **Damages** do not include fines; penalties or matters deemed uninsurable under applicable law.

E. **Fungi** means any form of fungus including but not limited to yeast, mold, mildew, rust, smut or mushroom.

F. **Group Policy Period** means <VARIABLE> to <VARIABLE> and is composed of two **Annual Policy Terms**.

G. **Individual Policy Period** means the period set forth in the Certificate of Coverage commencing with the date the **Licensee** obtained coverage under the current group policy by paying the appropriate premium and ending with the cancellation or expiration of the **Licensee's** coverage under the current group policy. The **Individual Policy Period** must be within the dates of the **Group Policy Period** shown on the Declarations.

H. **Insured** means the following:

- 1. the **Licensee**;
- 2. unlicensed employees of and under the direct supervision of the **Licensee** while acting in the course and scope of their employment; provided always that the **Claim** arises out of a negligent act, error or omission relating to the rendering of or failure to render **Professional Services** on behalf of the **Licensee**.

3. the heirs, executors, administrators or assigns of the **Licensee** in the event of the **Licensee's** death, incapacity, or bankruptcy but only to the extent that such **Licensee** would have been provided coverage under this policy;

When this policy provides coverage for a **Claim** made against any of its **Insureds** listed in 1, 2 or 3 above, **Insured** will also mean:

4. any **Real Estate Firm** that the **Licensee** represents but only for its vicarious liability for the negligent acts, errors or omissions arising out of **Professional Services** by the **Licensee**.
- I. **Licensee** means the person who holds an active real estate license issued by the **Policyholder** under the Tennessee Real Estate Broker License Act, T.C.A. §62-13-101, et. seq. and who has paid the required premium.
- J. **Lock Box Liability** means liability for **Damages** arising from an **Insured's** use of a lock or key box. A lock or key box is a device to allow authorized persons without a key to enter a locked door.
- K. **Microbes** mean any non-fungal microorganism or non-fungal colony-form organism that causes infection or disease.
- L. **Policyholder** means the Tennessee Real Estate Commission.
- M. **Principal Real Estate License** means the state license under which the majority of the licensee's real estate transactions are conducted.
- N. **Professional Services** means services performed by the **Licensee** as a real estate broker, affiliate broker or timeshare salesperson as defined in Tennessee Real Estate Broker License Act, T.C.A. §62-13-101, et. seq. It also includes appraisal services performed by an **Licensee** who is licensed as a real estate appraiser as defined in the Tennessee Licensing and Certified Real Estate Appraisers Act, T.C.A. §62-39-101, et. seq.
- O. **Real Estate Firm** means a legal entity with which brokers or affiliate brokers, or timeshare salespersons as defined in Tennessee Real Estate Broker License Act, T.C.A. §62-13-101, et. seq. are affiliated and which employs the **Licensee**.
- P. **Related Claims** means all **Claims** arising out of a single negligent act, error or omission or arising out of **Related Negligent Acts, Errors or Omissions** in the rendering of **Professional Services**.
- Q. **Related Negligent Acts, Errors or Omissions** mean all negligent acts, errors or omissions in the rendering of **Professional Services** that are temporally, logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.
- R. **Retroactive Date** is the date when the first real estate errors and omissions coverage was effective insuring the **Licensee** on a claims-made basis and since which time the **Licensee** has been continuously insured by coverage similar to that provided by this agreement. The **Retroactive Date** is established separately for each **Licensee**.

#### IX. PREMIUM

This coverage shall not be effective until and unless the application for coverage has been approved by the Company and the premium has been paid. Each **Insured's** premium shall be fully earned at the inception date of the policy unless the Company cancels the policy.

#### X. AUDIT

The Company may audit the **Insured's** records to determine the accuracy of pertinent information provided by the **Insured**. The Company will give reasonable notice to the **Insured** of such an audit. The audit will take place during the **Insured's** regular business hours.

#### XI. THE INSURED'S DUTIES IF THERE IS A CLAIM

- A. The **Insured** shall give written notice by submitting a completed **Claim** Form to the Company as soon as possible after the **Claim** is first made but in no event more than ninety (90) days after the **Insured** becomes aware of such **Claim**. Such written notice shall include the name of the **Licensee** and shall include the time, place and details of the **Claim**. Notice shall be delivered to:

**U.S. Mail Delivery:**

Claims Department  
P. O. Box 6709  
Louisville KY 40206-0709

**Overnight Delivery:**

Claims Department  
4211 Norbourne Boulevard  
Louisville KY 40207-4048

**Phone**

(502) 897-1876  
Toll-Free (888) 248-2444  
Fax: (502) 897-7174

- B. The **Insured** shall not admit any liability, make any settlement, pay any **Damages** or assume any duty or obligation for any **Claim** without the prior written consent of the Company. The **Insured** shall not incur any **Claim Expenses** for any **Claim** without the prior written consent of the Company.
- C. The **Insured** shall immediately forward to the Company every demand, notice, summons or other process received by the **Insured** or the **Insured's** representatives about any **Claim**.
- D. The **Insured** shall cooperate with the Company and, at the Company's request, the **Insured** shall assist the Company in responding to the **Claim** and making settlements. The **Insured** shall attend hearings and trials and help in securing and giving evidence at the Company's request.

#### XII. SUBROGATION

If the Company makes any payment under this policy, the Company shall receive all of the **Insured's** rights of recovery against any persons or organizations. The **Insured** shall assist the Company in whatever way is necessary to secure such rights. When a **Claim** is made, the **Insured** shall do nothing to thwart the Company's recovery of amounts paid to other parties who might be responsible for the **Claims**.

#### XIII. CHANGES

The terms of this policy may not be waived or changed unless the Company issues an Endorsement. All Endorsements become a part of this policy. The **Policyholder** and the Company may make changes in the terms of the policy upon mutual consent.

#### XIV. ACTION AGAINST THE COMPANY

The **Insured** may not bring a lawsuit against the Company unless the **Insured** has complied with all the terms and conditions of this policy. Nor shall an action lie against the Company until judgment or trial determines the **Insured's** responsibility to pay.

#### XV. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate will not relieve the Company of its obligations under this policy.

## XVI. CANCELLATION

- A. The **Policyholder** may cancel this policy by giving, mailing or delivering the Company advance written notice of cancellation or surrendering the policy to the Company at least ninety (90) days before the effective date of cancellation. If the **Policyholder** cancels the policy, it is responsible for notifying each **Licensee** of the effective date of cancellation.
- B. The Company may cancel this policy in accordance with the provisions of T.C.A. §56-7-1801, et. seq. Notice of cancellation will state the effective date of cancellation. If notice is mailed, proof of mailing will be sufficient proof of notice. If the policy is canceled, the effective date of cancellation will become the end of the policy period.

## XVII. NONRENEWAL

If the Company elects not to renew this policy, it will give, mail or deliver to the **Policyholder** written notice of nonrenewal at least ninety (90) days before:

- A. the expiration date of the policy, or  
B. the expiration date of the **Annual Policy Term**.

## XVIII. CONFORMITY TO STATUTES

If applicable law is in conflict with this policy, the policy is amended to conform to that law.

## XIX. OTHER INSURANCE

This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis, except when purchased specifically to apply in excess of this insurance. When both this insurance and other insurance apply to any **Claim**, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limits of Liability under this policy for such **Damages** bears to the total applicable Limits of Liability of all valid and collectible insurance against such **Claims**.

## XX. AUTHORIZATION CLAUSE

By accepting this policy, the **Insured** agrees that the statements in the application are the **Insured's** agreements and representations. The **Insured** agrees that these statements are true and correct as of the inception of this policy. This policy has been issued relying upon those statements and representations. The **Insured** agrees that the policy and application are the total agreement between the **Insured** and the Company or its agents.

## XXI. TRANSFER

This policy is not transferable.

IN WITNESS WHEREOF, we have caused this Policy to be executed by our Chairperson and Secretary, but this Policy shall not be binding upon us unless completed by the attachment of the Certificate of Insurance and executed by our duly authorized representative.

Chairperson  
Secretary

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# Sample Policy